

ANNUAL REPORT  
MAINE LABOR RELATIONS BOARD  
Fiscal Year 2002

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (1988).

Introduction

\_\_\_\_\_ During the past year, the Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were some fluctuations in the Board's activities compared to the previous year. The continued robustness in the state economy, throughout most of the reporting period, resulting in the availability of sufficient resources to fund collective bargaining settlements, has contributed to an overall decline in demand for the Board's services this year.

Members of the Board serve four-year terms, with the term of office of each primary member expiring on September 30 of successive years. The terms of the alternate members expire at the same time as that of their respective primary member. This year, the terms of the primary and alternate Employee Representatives expired. Governor King nominated Carol B. Gilmore of Charleston for reappointment as the Employee Representative and nominated Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland for reappointment as Alternate Employee Representatives. All of the nominations were confirmed by the Legislature, pursuant to unanimous recommendations by the Joint Standing Committee on Labor. Public Chair Peter T. Dawson of Hallowell and Employer Representative Karl Dornish, Jr., of Winslow continued to serve in their respective capacities as did Alternate Chairs Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer and Alternate Employer Representatives Edwin S. Hamm and Nelson J. Megna, both of Portland.

Continuing an initiative begun last year, the Board, the State Board of Arbitration and Conciliation, and the Panel of Mediators co-hosted two seminars for our client community this year. The first, entitled "Issues and Roles in Mediation," was held at the Bureau of Labor Standards training room in Hallowell, on November 9, 2001. Approximately 30 practitioners attended this event. The second program was presented by Tom Colosi, the former Vice President of Alternative Dispute Resolution Education of the American Arbitration Association and the author of several books on negotiations and dispute resolution, on the topic of dealing with difficult people in

negotiating and administering collective bargaining agreements. This seminar attracted 50 practitioners and was held on April 5, 2002, at the Portland office of the Department of Human Services. The Board of Overseers of the Bar awarded Maine attorneys continuing legal education credit for attending and participating in these programs. These seminars have been particularly well received by labor relations practitioners because relevant continuing education opportunities are non-existent in Maine and the sessions foster informal interaction among practitioners and agency neutrals, away from the heat of a particular dispute or bargaining situation.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board's web site continued to be the prime source for research of Board precedent. The site is equipped with a search engine and contains an extensive data base of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. The web site is maintained and updated by Board staff and has been highly praised by the labor-management community.

### Legislative Matters

\_\_\_\_\_The most significant Legislative development this year was the review of the Board's operations and administration by the Joint Standing Committee on Labor, pursuant to the provisions of the Government Evaluation Act. This program review was conducted in conjunction with that of the operations of the Board's affiliated organizations, the State Board of Arbitration and Conciliation and the Panel of

Mediators. The Executive Director and the Board staff also provide professional and administrative support to these bodies and their annual budgets are included with that of the Board. As required by law, a detailed report discussing the Board's programs was reviewed by the Labor Committee. The primary members of the Board attended the Labor Committee's Public Hearing on January 8, 2002, where the Executive Director's briefed the Committee and responded to questions regarding the full range of our program. On March 13, 2002, the Labor Committee issued a unanimous report to the President of the Senate and the Speaker of the House, indicating that the Board was successfully discharging its statutory responsibilities and thereby concluding the GEA process.

There were no bills before the Second Regular Session of the 120th Legislature that would have had direct substantive impact on the agency or its subject matter jurisdiction. The Board staff did monitor one or two bills, attending public hearings and work sessions, and otherwise assisting the Labor Committee in their consideration of matters that might have potential impact on collective bargaining or agency operations.

#### Bargaining Unit and Election Matters

During fiscal year 2002, the Board received 19 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 21 of these filings in FY 01, 34 in FY 00, 33 in FY 99, 39 in FY 98, and 23 in FY 97. Of the 19 FY 02 filings, 9 were for municipal or county government units, 6 for educational units, 3 concerned State Executive Branch employees, and 1 involved a University Act unit. The unit agreements were filed by the following employee organizations:

|  |              |
|--|--------------|
| AFSCME Council 93  | 6 agreements |
| Maine Education Association/NEA <sup>1</sup>                   | 5            |
| Maine State Employees Association                              | 4            |
| Teamsters Union Local 340                                      | 2            |
| Fayette Public Works Association                               | 1            |
| International Association of Machinists<br>& Aerospace Workers | 1            |

Fourteen (14) unit determination or clarification petitions (submitted when there

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<sup>1</sup>While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

is no agreement on the composition of the bargaining unit) were filed in FY 02: 8 were for determinations, and 6 were for clarifications. Four (4) of the new unit petitions actually went to hearing. Agreements were reached in 5 cases, 1 was dismissed, and 4 are pending. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 50% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 10 unit petitions filed in FY 01, 13 in 00, 20 in FY 99, 17 in FY 98, and 19 in FY 97. The unit determination/clarification requests were filed by the following employee organizations:

|  |             |
|--|-------------|
| Maine State Employees Association                              | 3 petitions |
| International Association of Machinists<br>& Aerospace Workers | 2           |
| Maine Association of Criminal Justice<br>Employees             | 2           |
| Maine Education Association/NEA                                | 2           |
| Teamsters Union Local 340                                      | 2           |
| AFSCME Council 93  | 1           |
| Fayette Public Works Association                               | 1           |
| Rockport Police Officers Association                           | 1           |

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 02 there were 3 voluntary recognitions filed, involving the following employee organizations:

|                             |              |
|-----------------------------|--------------|
| Maine Education Association | 2 agreements |
| Maine Association of Police | 1            |

Nine (9) bargaining agent election requests were filed in FY 02; 3 elections were actually held, including matters carried forward from FY 01, and 6 election matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

|  |             |
|--|-------------|
| AFSCME Council 93  | 2 petitions |
| Maine Education Association/NEA                                  | 2           |
| Fayette Public Works Association                                 | 1           |
| International Association of Machinists<br>& Operating Engineers | 1           |
| Maine Association of Criminal Justice Employees                  | 1           |
| Rockport Police Officers Association                             | 1           |

In FY 01, there were 7 voluntary recognitions filed, 7 bargaining agent election requests received, and 9 elections held.

In addition to representation election requests, the Board received 5 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. The results of the decertification/certification petitions were as follows:

| <u>Petitioner</u>                               | <u>Incumbent Agent</u>                       | <u>Prevailed</u>                 |
|---|--|----------------------------------|
| Maine Association of Criminal Justice Employees | AFSCME                                       | Petition moot (severance denied) |
| Maine Association of Police                     | National Association of Government Employees | M.A.P.                           |
| Maine Association of Police                     | International Brotherhood of Police Officers | Pending                          |
| Maine Association of Police                     | Teamsters Union Local 340                    | Pending                          |
| Individual Unit Employee                        | Teamsters Union Local 340                    | Petition insufficient--dismissed |

The Board received 1 straight decertification petition in FY 02. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent. One (1) election was actually held, involving a matter carried forward from FY 01. The results of the decertification elections was as follows:

| <u>Incumbent Agent</u>          | <u>Outcome</u>    |
|---------------------------------|-------------------|
| Maine Education Association/NEA | No Representative |

There were 3 election matters carried over from FY 01. Consequently, there were 18 such matters requiring attention during the fiscal year; this compares with 17 in FY 01, 30 in 00, 33 in FY 99, 36 in FY 98, and 25 in FY 97.

### Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution

process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year decreased significantly. There were 54 new requests filed this year compared with 61 last year, 73 in FY 00, 69 in 99, 68 in FY 98, and 74 in FY 97. In addition to the new mediation requests received during FY 02, there were 23 matters carried over from FY 01 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 77, down from 84 in FY 01. During the downturn in the regional economy in the early 1990's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for mediation services. The significant decline in demand experienced this year reflects external factors affecting the bargaining process--continued public confidence in the regional economy for most of the year and sufficient resources to fund settlements. These developments facilitated the bargaining process and reduced demand for mediation. With the downturn in the regional economy and the state revenue shortfall that surfaced late this fiscal year, the resources available for the settlement of labor agreements may become tighter next year, resulting in increased demand for mediation services.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 01, declined somewhat this year. This year's settlement rate was 76%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to 85.9% last year, with a mean of 75.39%. Anecdotal evidence from the mediators and partisan representatives suggests that the continued robust performance of the state and regional economies resulted in the availability of additional resources to fund settlements this year.

Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we have

reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The following employee organizations were involved in mediation this year:

|  |             |
|--|-------------|
| Maine Education Association/NEA            | 40 requests |
| Teamsters Union Local 340                  | 8           |
| Maine State Employees Association          | 2           |
| AFSCME Council 93                          | 1           |
| Agricultural Bargaining Council            | 1           |
| International Association of Firefighters  | 1           |
| International Union of Operating Engineers | 1           |

The level of preventative mediation activity also declined this year. We received 2 requests for preventative mediation services, 2 sets of negotiations were completed using the technique, resulting in 2 settlements; therefore, the technique had a success rate of 100% this year. Last year, 9 cases were completed, resulting in 6 ratified successor collective bargaining agreements.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2002, 14 fact-finding requests were filed. Those requests represent a slight increase from last year's level. Eight (8) petitions were withdrawn or otherwise settled, 10 requests went to hearing, and 1 petition is pending hearing. Last year 9 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

|   |             |
|---|-------------|
| Maine Education Association/NEA           | 13 requests |
| International Association of Firefighters | 1           |

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance issues are subject to interest arbitration; but, an award on these matters is only advisory. In recent years the Board has received few interest arbitration requests. One was received this year. One was filed last year, none in FY 00, 2 in FY 99, 2 in FY 98, and 1 in FY 97.

Although the public labor relations statutes require that arbitration awards be filed with the Board, they usually are not. This year, one interest arbitration report was

received. While we assume that this was the only interest arbitration award in the public sector during the year, it may be that other parties have simply failed to provide proper notification to the Board.

### Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board. Seventeen (17) complaints were filed in FY 02. This represents a decrease over the FY 01 level. During the last 5 years, the number of complaints filed each year has fluctuated from a low of 19 to a high of 26, with the mean being 22.2. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 17 complaints filed in FY 02, there were 17 carryovers from FY 01, compared with 24 complaints and 21 carryovers last year. Board panels conducted no evidentiary hearing days during the year (one case was actually settled by the parties prior to the convening of the evidentiary hearing), compared with 3 in FY 01. Board members sitting singularly as prehearing officers held conferences in 7 cases, compared with 14 in FY 01. The Board issued formal Decisions and Orders in 4 cases on the basis of stipulated records; hence, no evidentiary hearing was required. One (1) case has been continued indefinitely at the request of one or both parties. Such a continuance, or inactivity, usually indicates that the parties are attempting to resolve their differences, even though a complaint has been filed to preserve the complainants' rights, given the Board's six-month statute of limitations. Eighteen (18) complaints were dismissed or withdrawn at the request of the parties. Four (4) complaints await prehearing and/or hearing; two (2) cases are pending Board deliberation and/or decision; and two (2) cases are awaiting withdrawal. One (1) case was dismissed by the executive director and another is pending dismissal.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.



Prohibited practice complaints were filed by the following this year:

|  |              |
|--|--------------|
| Maine Education Association/NEA            | 7 complaints |
| Individual complainants                    | 3            |
| International Association of Fire Fighters | 3            |
| Teamsters Union Local 340                  | 2            |
| International Union of Operating Engineers | 1            |
| Maine State Employees Association          | 1            |

### Appeals

One (1) unit determination appeal and one (1) unit clarification appeal were filed this year. Both cases are pending and are being carried forward into next year.

The Board was involved in two cases in the courts this year. In the case of ***Troy Langley v. Maine State Employees Association***, which was pending decision at the time of last year's report, the Superior Court, No. AP-01-05 (Me. Super. Ct., Ken. Cty., July 12, 2001), and the Supreme Judicial Court, 2002 ME 32, 791 A.2d 100 (2002), affirmed the Board's conclusion that the bargaining agent had not violated the statutory duty of fair representation through the services it rendered to Mr. Langley in connection with the termination of his employment with the Maine Department of Transportation.

The Board was involved in one other court case this year, ***City of Augusta v. Local 1650 IAFF, AFL-CIO***, No. AP-01-63 (Me. Super. Ct., Ken. Cty., May 3, 2002). In that case, the Court affirmed the Board's holding that the public employer had violated the statutory duty to negotiate in good faith when it failed to meet with the bargaining agent, within 10 days of receipt of a written notice requesting a meeting for collective bargaining purposes, to negotiate over the impact of a change in health insurance made by a third party.

### Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

|  | FY<br>1997 | FY<br>1998   | FY<br>1999    | FY<br>2000   | FY<br>2001   | FY<br>2002   |
|--|------------|--------------|---------------|--------------|--------------|--------------|
| Unit Determination/<br>Clarification Requests<br>Number filed--      | 19         | -10.5%<br>17 | +17.7%<br>20  | -35%<br>13   | -23.1%<br>10 | +40%<br>14   |
| Agreements on<br>Bargaining Unit<br>(MLRB Form #1)<br>Number filed-- | 23         | +69.6%<br>39 | -15.4%<br>33  | +3%<br>34    | -38.2%<br>21 | -9.5%<br>19  |
| Voluntary Recognitions<br>(MLRB Form #3)<br>Number filed--           | 5          | +40%<br>7    | -42.9%<br>4   | +200%<br>12  | -41.7%<br>7  | -57.1%<br>3  |
| Bargaining Agent<br>Election Requests<br>Number filed--              | 18         | -11.1%<br>16 | +18.75%<br>19 | -36.8%<br>12 | -50%<br>6    | +50%<br>9    |
| Decertification<br>Election Requests<br>Number filed--               | 3          | +167%<br>8   | -37.5%<br>5   | -80%<br>1    | +100%<br>2   | -50%<br>1    |
| Decert./Certification<br>Election Requests<br>Number filed--         | 1          | +100%<br>2   | +150%<br>5    | +20%<br>6    | -67%<br>2    | +150%<br>5   |
| Mediation Requests<br>Number filed--                                 | 74         | -8.1%<br>68  | +1.5%<br>69   | +5.8%<br>73  | -16.4%<br>61 | -11.5%<br>54 |
| Fact-Finding<br>Requests<br>Number filed--                           | 14         | +35.7%<br>19 | +15.8%<br>22  | -31.8%<br>15 | -13.3%<br>13 | +7.7%<br>14  |
| Prohibited Practice<br>Complaints<br>Number filed--                  | 22         | -9.1%<br>20  | -5%<br>19     | +36.8%<br>26 | -7.7%<br>24  | -29.2%<br>17 |

The above table indicates that the demand for the Board's different services varied during the fiscal year. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and fire fighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. On the other hand, there was an increase in

organizational activity this year and there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services in the future.

During FY 02, public sector labor-management relations in Maine continued to mature. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services, a decline in the filing of prohibited practice complaints and the continued willingness of parties to settle in those cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 28th day of June, 2002.

Respectfully submitted,

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Marc P. Ayotte  
Executive Director  
Maine Labor Relations Board